United Nations S/2003/1218

Security Council

Distr.: General
30 December 2003

Original: English

Letter dated 29 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 October 2003 (S/2003/1000). The Counter-Terrorism Committee has received the attached supplementary report from the Seychelles, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 23 December 2003 from the Permanent Representative of the Seychelles to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I refer to your letter dated 3 October 2003. On behalf of my Government, I have the pleasure of forwarding comments and additional information requested by your office, pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Claude **Morel**
Ambassador
Permanent Representative

Enclosure*

AMMENDED REPORT BY THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES TO THE UNITED NATIONS COUNTER TERRORISM COMMITTEE

Pursuant to paragraph 6 of Resolution 1373 of the United Nations Security Council

November 2003

* Annexes are on file with the Secretariat and are available for consultation.

INTRODUCTION

The Government of the Republic of Seychelles submitted its first report in April 2003 pursuant to paragraph 6 of Security Council Resolution 1373 (2001)(the Resolution).

The Government of the Republic of Seychelles has the pleasure in submitting this second amended report covering the areas of concern expressed by the Counter Terrorism Committee.

This amended report it is hoped, will provide further insight to the committee with regards to issues not fully developed in the initial report.

Pursuant to the first report this amended version once again represents the commitments and cooperation of the Government of Seychelles to the implementation of the United Nations Security Council Resolution (UNSCR) 1373 adopted on the 28th September 2001 and other relevant resolutions.

Sub-paragraph 1(a)

In compliance with this sub paragraph, member states are required to take steps to suppress the financing of terrorism. The CTC would be grateful if the Republic of Seychelles provides an outline of the proposed Anti-Terrorism Bill noted on page 4 of the first report, and explain how the legislation will bring the republic of Seychelles into compliance with the various sub-paragraphs of the Resolution.

The Anti Terrorism bill has been enacted to provide for measures to prevent and suppress terrorism and for connected matters.

It covers specified entities, offences, investigation of offences, trial of offences, extradition and mutual assistance in criminal matters and other miscellaneous.

A person shall be guilty of having committed an offence under the bill if:

- He commits an act which falls under the definition of terrorist acts
- Provides or collect funds to commit terrorist acts
- Collects property or provides of property and services and commissions terrorist acts
- Make use of property for the commission of terrorist acts arrangements for retention or control of terrorist property
- Deals with property owned or controlled by terrorist groups
- Solicits and gives support to terrorist groups or for the commissioning of terrorist acts
- Harbouring of persons committing terrorist acts
- Provides weapons to terrorist groups
- Recruit for terrorist groups or terrorist acts
- Train terrorist groups or persons
- Promotes and facilitates terrorism in foreign states
- Conspiracy to commit offences under this Act
- Holds membership of terrorist groups
- Make arrangement for meetings in support of terrorist groups
- Participates in the commission of offences under this Act

The Act provides for certain powers to enable the efficient investigation of offences. It allows for an arrest without warrant to take place. However when that section is evoked the person shall be released within 24 hours unless other legal means are sought. The court can also remand a suspect. In carrying out his investigation a police officer can apply to the court for an order for the gathering of information, an interception of

communications order and the admissibility of intercepted communications. In addition to that the Commissioner of Police on reasonable grounds has the power to seize property used in commission of terrorist acts.

With regards to the trial of offences it is the Supreme Court, which shall have jurisdiction to try offences under this Act. Evidence by certificate will be admissible. The court may also order for forfeiture of property on conviction of offences under this Act.

Another area covered by the Act is the issue of Extradition and Mutual Assistance in Criminal Matters. The Act makes provision for the exchange of information relating to terrorist groups and terrorist acts. The Act provides for the use of the Counter terrorism Convention as a basis for extradition as well as for mutual assistance in criminal matters. Certain terrorist acts will also be deemed extraditable despite the fact that it might be considered as being of political nature.

Under the Act every person has a duty to disclose information relating to terrorists acts and information relating to property of terrorist groups or property used for commission of offences under this Act. A judge on reasonable grounds may order for the seizure and restraint of property and for the forfeiture of property. The Act also allows for a Minister by order published in the Official gazette to prohibit making funds available to persons in foreign states to commit terrorist acts, to refuse application for registration and the revocation of the registration of association linked to terrorist groups. Furthermore the Act allows for the provision of information relating to persons leaving and entering the country. The Minister responsible for Immigration has the power to refuse refugee application and to make regulations in respect of all matters in respect of which regulations are required or authorized to be made by the Act.

- ❖ At this point in time the bill has not yet been published. As soon as the publication is available a copy will be forwarded to the Committee.

Could the Republic of Seychelles further explain, as noted on page 4 of its first report, the structure of the Banking Supervision Department of the Central Bank? Does it function as a Financial Intelligence Unit (FIU) or as a clearing house for suspicious transactions reports provided by regulated entities? If it does not act as an FIU, does the Republic of Seychelles plan to establish an FIU as part of its anti-terrorism strategy? Can the current structure share its information with foreign law enforcement agencies as it relates to terrorism?

Structure of Bank supervision of Central Bank is set out in the diagram below.

(See Annex A)

The Director General is responsible for the overall running of the divisions. The officers have each been designated with the responsibility of supervising specific banks by means of both off-site and on-site inspections.
The Bank Supervision Division within the Central Bank acts as the FIU. It liaises between the Police and the Attorney General's Office. There exist no barriers which prevents the sharing of information with foreign law enforcement agencies.

The CTC would be pleased if the Republic of Seychelles would outline any measures it is taking to control the trade in conflict diamonds, other precious stones and precious metals, which by their nature can support the financing of terrorism? The CTC notes that Chapter 76 of the Exchange Control Act addresses gold.

Currently there are no specific legislations relating to the trade of diamonds or any other precious metals and stones. This is so because Seychelles is not involved in such trading activities. However the Seychelles EEZ is patrolled by the Seychelles coastguard and any suspected vessels are boarded and searched. The point of entry at the international airport is constantly under supervision by security personnel, Custom officers as well as members of the Police, conduct searches on any suspicious incoming or outgoing passengers.

The larger scale of diamonds, precious stones and precious metals does not exist in Seychelles. However to trade in diamonds one needs an import and export permit which is granted by the Import Controller. Under the Exchange Control Act, unless authorized by the Minister no person in Seychelles is permitted to buy, sell or borrow gold.

Could the Republic of Seychelles inform the CTC, as noted on page 7 of its first report, if it has finished its review of bearer shares and how it intends to address the question of establishing the beneficial ownership of bearer shares issued by the 12,300 International Business Companies (IBC's) trusts and other entities already in circulation and its intentions as regards on issuing new shares. Bearer shares make it difficult to establish the identity of beneficial owners and in that regard could aid in terrorist financing.

These issue of bearer shares falls under the auspices of the Seychelles International Business Authority (SIBA). Seychelles is currently in the process of amending the International Business Act 1994 in respect to the provisions of bearer shares. SIBA has opted for the registration of the names and address of the person to whom bearer shares were issued or transferred, the number of each class and series of the bearer share held and the date on which the person's name was entered in the register. This register shall be kept by the registered agent at its office in Seychelles. Transfers are effected by way of a notice signed by both the transferor and transferee to the registered agent, disclosing their names and addresses, providing a copy of the share certificate was delivered to the transferee. This information will in turn be registered in the register.

The CTC would be grateful to now what measures the Republic of Seychelles utilizes to prevent terrorists from abusing domestic and non-domestic Internet banking privileges? How are identity requirements confirmed and suspicious transactions monitored?

At present only one local bank offers internet baking facilities such as the transfer of funds from one account to another, ordering of statements and cheque books.

No international transfer of funds are permitted. The identities of the customers are verified when the account is first opened.

The CTC would be pleased if the Republic of Seychelles could explain the process, as noted on page 7 of its first report, of obtaining satisfactory evidence of identity. How is the identity of the holders of its domestic and non-domestic financial accounts and the beneficial owners of its IBC's, trusts and insurance companies confirmed? For example is photo identification required such as passports, driver's licences, national identity documents, etc? Is this information maintained as part of the records of the entities and how long are they maintained in the file. Are terrorist lists compared with these identities?

Under the Anti-Money Laundering Act and the Guidance Notes issued by the Central Bank, all financial institutions are required to take the necessary measures to properly identify all prospective customers. Proper identification documents such as identity cards, passports, drivers licence etc are required and the opening of accounts by post or telephone, is not encouraged. Additionally, the local banks have their internal guidelines on opening of accounts which are reviewed by inspectors from the Bank Supervision Division during on-site inspections.

In respect to IBCs and trusts there are no statutory obligations for them to file their financial accounts with the Authority.

All corporate service providers are under an obligation to practice due diligence and Know You Client (KYC) procedures at an international standard. Currently a new legislation *The International Corporate Service Providers Act 2003* with the aim of regulating the activities of corporate service providers is being drafted. The Authority, in accordance with the regulatory codes, issues guidelines as to how good and proper due diligence, KYC procedures shall be conducted and this involves the corporate services provider obtaining such documents

like certified copies of clients' passports, driving licences, utility bills etc. so as to establish identity and proof of address. The proposed legislation will provide a rigorous regulatory framework which will ensure that Seychelles abides to approve international best practice in offshore regulation. Under the Act, the Authority will be able to conduct on site inspection of licensees to ensure that record keeping and business systems conform to the obligations of the Act and its regulatory codes. Should there be any need for the Authority to request due diligence information on the licensees' clients; the Act will empower it to do so.

The Regulator for insurance companies is the Ministry of Finance and they in turn have their own regulations regarding such activities namely the Insurance Act 1994. They too require the practice of due diligence and KYC procedures.

Most financial institutions maintain records of the entities for at least 5 years after closing of an account or termination of a business relationship. The Central Bank of Seychelles regularly receives a list of individuals or entities supposed to be involved in terrorist activities from the American Embassy in Mauritius.

This list is circulated to all financial institutions who are advised to take appropriate measures such as freezing and blocking such accounts. The Central Bank is advised in writing whether such accounts do exist. So far, none of the banks have advised that individuals or entities suspected of being involved in terrorist activities, operate local accounts.

The CTC will be pleased to know what measures the Republic of Seychelles utilizes to oversee or regulate its non-banking financial sector not covered under the Financial Institutions Act or the Foreign Exchange Act such as casinos. Hawala activities, etc. to prevent it from being utilized to finance terrorism.

With regards to measures regulating and overseeing the non banking financial sector it can be said that for the time being only The Seychelles Credit Union (SCU) is a non banking institution which falls under the supervision of the Ministry of Finance. Currently there are no legal provisions for the existence of money remittance or transfer services.

Where Halawala activities are concerned none of such activities exists in Seychelles so there has been no need for such regulations. However with regards to casinos there are no specific acts. Their activities are regulated/licensed by the licensing authority.

Sub paragraph 1(c)

The Republic of the Seychelles indicated that, as the law now stands, terrorist funds could be frozen if they were derives from proceeds of a crime or money laundering. The procedures outlined on pages 8 and 9 of the first report indicate lengthy civil and criminal procedures that in most instances will not permit quick action by law enforcement against terrorist funds. The resolution requires freezing terrorist funds without delay. Has the Republic of the Seychelles given consideration to emergency procedures to freeze without delay terrorist funds between now and the passage of the proposed Anti-Terrorism Bill?

No evidence of terrorist funds has been found to date hence no emergency action has been taken. It is also worth pointing out that any emergency measures will need to be lawful.

Could the Republic of the Seychelles explain what procedures exist for the seizing or freezing of bearer shares in light of Section 32 et al of the International Business Companies Act, 1994. This section appears to provide a means to thwart legitimate international law enforcement agencies against terrorist funds?

The Seizure of bearer shares is provided for under section 32 of the IBC Act 1994.
Section 32(1) states that 'where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside Seychelles-

a. By or in connection with a nationalisation, expropriation, confiscation, coercion, force or duress, or similar action; or
b. By or in connection with the imposition of any confiscation of assets, assessment or other government change

Takes or seizes any shares or other interests in a company incorporated under this Act, the company itself or a person holding shares or any other interest in a company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who should have held shares or any other interest in the company but for taking or seizure of the shares or other interests as continuing to hold the shares or other interests.

(2) Without affecting subsection (1), where a person whose shares or other interest have been taken or seized as referred to in section (1) is other that a natural person, the person making the application under subsection (1) or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the shares or other interests in the company as the holder or those shares or other interests.

(3) The court, may upon application made to it under subsection (1) or (2)
a. Grant such relief as it considers equitable and proper; and
b. Order that any shares of or other interests in the company vest in such person or authority as the court may appoint and for such purposes as the court may determine'

Section 32 provides a mean for the government to seize bearer shares as well as a mean of challenging that decision for the person or company in question.
It is acknowledgeable that the section does have a certain degree of openness but it does not thwart legitimate international law enforcement agencies.

<u>Sub paragraph 1(d)</u>

The Republic of Seychelles indicate on page 9 of its first report, that the Guidance Notes issued by the Central Bank of Seychelles requires information concerning beneficial owners of accounts at financial institutions and that these requirements will assist in identifying terrorists. What procedures are in place, if IBC's and other entities have bearer shares in circulation, for financial institutions to confirm that the beneficial owners of these accounts are not terrorists?

All corporate service providers are under an obligation to conduct KYC and due diligence procedures. Their key staff are trained in these matters. They are required by the Central Bank of Seychelles to report any suspicious activity. In addition to effecting their own due diligence vis-à-vis potential clients, service providers can also seek information through international law enforcement agencies such as Europol and Drug Enforcement Agency (DEA). Such practices are greatly encouraged by the financial institutions. It is also expected that with the amendment of the provisions regarding bearer shares, the names of holders of bearer shares will be known to the registered agent enabling them to conduct client identification.

On page 10 of its first report, the Republic of the Seychelles indicated special consideration has been recommended with respect to wire transfers and where customer transfers are made. Wire transfers should contain the ordering and beneficiary customers were also encouraged to provide the same information for the beneficiary and sender on all transfers made by electronic means. The CTC would be pleased to know if this information is considered a mandatory requirement or a voluntary process? Further, is the review of wire transfer activity and the confirmation that sender and receiver fields are uniformly completed part of the Central Banks supervisory audit plan?

The requirement on wire transfers is mandatory under the Anti-Money Laundering Act and additional explanations are given in the Guidance Notes issued by the Central Bank. Upon receipt of the FATF's 8 special

Recommendations the Central Bank issued a circular in early 2002 reminding all banks to take appropriate measures when handling wire transfers.

During on site inspections of local banks, inspectors from the Bank Supervision Division verify that adequate and pertinent information on both the sender and receiver have been obtained and that the instructions governing wire transfers have been adhered to.

Sub paragraph 2 (a)

The Republic of Seychelles indicates, on page 10 of its first report, that it is reviewing the Three Optional Protocols to the United Nations Convention on Transnational Organized Crime. The CTC would be pleased to know if the Republic of the Seychelles has decided to accede to or ratify the Three Optional Protocols, in particular, the Third Protocol, which addresses the illicit manufacture, sale and trafficking in firearms.

Upon its review of the Three Optional Protocols to the Convention on Trans National Organized Crime Seychelles is now in the process of ratifying these three protocols.

The CTC notes, on page 11 of the first report, that the Financial Institutions Act permits access to numbered account information and other non-domestic accounts if they relate to narcotics and dangerous drugs, arms trafficking and money laundering. The CTC would be grateful to know if terrorism will be added to this list prior to the passage of the Anti Terrorism Bill.

Financial Institutions Act (Section 45 B (2)(d)) provides for a Supreme Court order for disclosure of information relating to numbered accounts for any inquiry into trafficking of narcotics or arms or money laundering. Addition of terrorism to the list will be effective only if the offence of terrorism is known to the law. That will happen only when the proposed terrorism Bill is enacted.

Until then any money transaction via an account connected with a terrorist act will have to be investigated as a money laundering matter since it would necessarily involve "proceeds of crime".

Sub paragraph 2(b)

The Republic of the Seychelles, on page 12 of its first report, indicated that Police officers have to rely on the Central Bank for assistance in money laundering investigations. The CTC would be pleased to know how the regulatory law enforcement agencies coordinate their work to detect and interdict terrorist funds and what type of training is provided to regulatory, law enforcement and prosecutors to recognize terrorist related money laundering?

The method by which law enforcement agencies coordinate their work is as follows. Upon receiving a report of a suspicious transaction and upon being satisfied that a case of money laundering does exist the Central Bank informs the Police as is required under the Anti-Money Laundering Act. Investigative Officers from the Police and officers from the Bank Supervision are in constant contact and meet to discuss progress made. Officers from the Bank Supervision Division assist Police Investigative Officers to a certain extent. As the officers of the Bank Supervision division are still under going training in Anti-Money Laundering and terrorist related financing, the Central Bank is encouraging the Seychelles Police to send officers on such overseas training courses.

Sub paragraph 2 (c)

The Republic of Seychelles, on page 12 of its first report, indicates that the list of suspected terrorists are provided to ports of entry for scrutiny of incoming travellers. The CTC would be pleased to know if these locations are automated and if the terrorist lists are circulated to other departments such as Customs to check against importers and exporters?

The main ports of entry in Seychelles are the International Airport and the Victoria port. The International Airport is fully automated and provides strict security for incoming and outgoing travellers. The Victoria port is not automated however it is now under review.

Sub paragraph 2(e)

What is the competence of the courts in Republic of Seychelles to deal with criminal acts of the following kinds:

- **An act committed outside the Republic of Seychelles by a citizen or by a person who is habitually a resident of the Republic of Seychelles (whether that person is present or not)**
- **An act committed outside Republic of Seychelles by a foreign national who is currently in republic of Seychelles.**

Extraterritorial jurisdiction is given to local Courts in certain matters. Anti-money Laundering Act, Computer Misuse Act, Civil Aviation Act, Hijacking Act, etc are some examples. The proposed Terrorism Bill also has such provisions.

Sub paragraph 2(g)

Could the Republic of Seychelles please provide an outline of the legal provisions and other procedures in place, which govern the acquisition of citizenship?

Section 3 and 4 of the Citizenship Act provide for adopted children and children of citizens acquiring citizenship. Section 5 empowers the President to cause a person who has done signal honour or rendered distinguished service to Seychelles to be registered as a citizen. Section 6 empowers the President to cause a person in respect of whom special circumstances exist to be so registered. Articles 10 and 12 of the constitution relate to persons being children or grandchildren of Seychelles and persons, marrying citizens acquiring citizenship. Regulations made under the Citizenship Act provide for the procedure of acquiring citizenship.

Sub paragraph 3(d)

The CTC would welcome knowing what the Republic of Seychelles intentions are in becoming a party to the five remaining relevant International Conventions and protocols relating to terrorism, as noted on page 30 of its first report, as well as the not listed, Protocol on the Suppression of Unlawful Acts of violence at airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of unlawful Acts against the Safety of Civil aviation, Montreal, 24 February 1988 and an update on enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

Following from the intention of the first report Seychelles has now become a party to the remaining relevant International Conventions and Protocols relating to terrorism.

The Republic of Seychelles has ratified the following treaties:

i. International Convention Against the Taking of Hostages 1979
ii. Convention on the Physical Protection of Nuclear Material 1979
iii. Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991
iv. International Convention for the Suppression of Terrorist Bombings
v. OAU Convention on the Prevention and Combating of Terrorism
vi. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
vii. Statute Establishing the International Criminal Court
viii. International Convention for the Suppression of the Financing of Terrorism
ix. Convention Against Trans National Organized Crime (Palermo)

Sub paragraph 3(e)

Have the offences mentioned in the relevant international conventions and protocols on terrorism been included as extraditable offences in the bilateral treaties to which the Republic of Seychelles is a party?

The Extradition Act (First schedule-item 29) makes offences established under international conventions to which requesting or requested State and Seychelles are parties extraditable offences. The only Bilateral Extradition Treaty in existence is that between Seychelles and UK. Seychelles is reviewing the need for additional Bilateral treaties.

Other matters

Could the Republic of Seychelles please provide an organizational chart of its administrative machinery such as police, immigration control, customs, taxation and financial supervisory authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

(See Annexes B, C & D)

It has not been possible to provide all the organisation charts as some of the Admin Machinery is currently reviewing the way their organisation is structured.

The CTC is aware that the Republic of Seychelles may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organisations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of the Republic of Seychelles' response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of Resolution 1373.

There are no additional reports covering the matters or any other anti-terrorism measures outside those in this report and the initial report.

Attachment

1. **Insurance Act 1994**